



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R05-RCRA-2021-0374; FRL-9466-01-R5]

#### Illinois: Proposed Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Illinois has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Illinois' application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

**DATES:** Comments on this proposed rule must be received by *[Insert date 45 days after the date of publication in the Federal Register]*.

**ADDRESSES:** Submit your comments by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Email:* [Gonzalez.norberto@epa.gov](mailto:Gonzalez.norberto@epa.gov)

EPA must receive your comments by *[Insert date 45 days after the date of publication in the Federal Register]*. Direct your comments to Docket ID Number EPA-R05-RCRA-2021-0374. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](https://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do

not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov), or email. The Federal [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional submission methods, the full EPA public comment policy, information about CBI or multi-media submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](http://www.regulations.gov). For alternative access to docket materials, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Norberto Gonzalez, RCRA C and D Section, Land, Chemicals and Redevelopment Division, LL-17J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Norberto Gonzalez can be reached by telephone at (312) 353-1612 or via email at [Gonzalez.norberto@epa.gov](mailto:Gonzalez.norberto@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## **A. Why are revisions to state programs necessary?**

States that have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Illinois, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

## **B. What decisions have we made in this rule?**

On June 21, 2021, Illinois submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between December 5, 1997, and April 17, 2015. EPA concludes that Illinois' application to revise its authorized program meets all the statutory and regulatory requirements established under RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Illinois final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document.

Illinois has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

### **C. What will be the effect if Illinois is authorized for these changes?**

If Illinois is authorized for the changes described in Illinois' authorization application, these changes will become a part of the authorized State hazardous waste program and will therefore be federally enforceable. Illinois will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA Sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Illinois are already effective under state law and are not changed by this proposed action.

### **D. What happens if EPA receives adverse comments on this action?**

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

### **E. What has Illinois previously been authorized for?**

Illinois initially received Final Authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Illinois' program on the following dates: March 5, 1988 (53 FR 126, January 5, 1988); April 30, 1990 (55 FR 7320, March 1, 1990); June 3, 1991 (56 FR 13595, April 3, 1991); August 15, 1994 (59 FR 30525, June 14, 1994); May 14, 1996, (61 FR 10684, March 15, 1996); October 4, 1996 (61 FR 40520, August 5, 1996); March 10, 2017 (82 FR 13256, March 10, 2017); and on February 9, 2021 (86 FR 8713, February 9, 2021).

### **F. What changes are we proposing with this action?**

On June 21, 2021, Illinois submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Illinois' hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Illinois for the following program changes:

**Table 1 Illinois' Analogs to the Federal Requirements**

Rule Checklist	Description of Federal Requirement	Federal Register and date	Analogous state authority: Subtitle G: Waste Disposal, 35 Ill. Adm. Code (IAC)
162	Clarification of Standards for Hazardous Waste LDR Treatment Variances	62 FR 64504, December 5, 1997	728.144 Effective January 1, 1999
181	Universal Waste Rule	64 FR 36466, July 6, 1999	720.110, 721.109, 724.101, 725.101, 728.101, 703.123, 733.101, 733.102, 733.103, 733.104, 733.105, 733.106, 733.107, 733.108, 733.109, 733.110, 733.113, 733.114, 733.130, 733.132, 733.133, 733.134, 733.150, 733.160, 733.181 Effective June 20, 2000
200	Zinc Fertilizer Rule	67 FR 48393, July 24, 2002	721.104, 726.120, 728.140 Effective July 17, 2003
203	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Used Oil Management Standards	68 FR 44659, July 30, 2003	721.105, 739.110, 739.174 Effective July 19, 2004
208 and 208.1	Methods Innovation Rule and SW-846 Final Update III B	70 FR 34538, June 14, 2005 as amended 70 FR 44150, August 1, 2005	720.111, 720.121, 720.122, 721.103, 721.121, 721.122, 721.135, 721.138, 721 Appendix A, B, and C, 724.290, 724.414, 724.934, 724.963, 724 Appendix I, 725.290, 725.414, 725.934, 725.935, 725.963, 725.981, 725.984, 726.200, 726.202, 726.206, 726.212, 726 Appendix I, 728.140, 728.148 Table U, 728 Appendix I, 703.205, 703.223,

			703.232, 739.110, 739.144, 739.153, 739.163 Effective February 23, 2006
209	Universal Waste Rule: Specific Provisions for Mercury Containing Equipment	70 FR 45508, August 5, 2005	720.110, 721.109, 724.101, 725.101, 728.101, 703.101, 733.101, 733.104, 733.109, 733.113, 733.114, 733.132, 733.133, 733.134 Effective December 20, 2006
211	Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures	70 FR 57769, October 4, 2005	721.103 Effective December 20, 2006
213	Burden Reduction Initiative	71 FR 16862, April 4, 2006	720.110, 720.131, 721.104, 724.115, 724.116, 724.152, 724.156, 724.173, 724.198, 724.199, 724.200, 724.113, 724.215, 724.220, 724.243, 724.245, 724.247, 724.274, 724.291, 724.292, 724.293, 724.295, 724.296, 724.351, 724.380, 724.414, 724.443, 724.447, 724.654, 724.671, 724.673, 724.674, 724.1161, 724.1162, 724.1200, 724.1201, 725.115, 725.116, 725.152, 725.156, 725.173, 725.190, 725.193, 725.213, 725.215, 725.220, 725.243, 725.245, 724.247, 725.274, 725.291, 725.292, 725.293, 725.295, 725.296, 725.301, 725.321, 725.324, 725.359, 725.380, 725.401, 725.403, 725.414, 725.541, 725.543, 725.544, 725.2061, 725.2062, 725.1200, 725.1201, 726.202, 726.203, 728.107, 728.109, 703.114, 703.116, 703.126, 703.142, 703.142 Appendix I Effective July 14, 2008
215	Cathode Ray Tubes Rule	71 FR 42928, July 28, 2006	720.110, 721.104, 721.138, 721.139, 721.140, 721.141 Effective July 14, 2008
217	NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments	73 FR 18970, April 8, 2008	724.440, 726.200 Effective December 30, 2008
218	F019 Exemption for Wastewater Treatment Sludges from Auto	73 FR 31756, June 4, 2008	721.131, 721.131 Table Effective December 30, 2008

	Manufacturing Zinc Phosphating Processes		
222	OECD Requirements; Export Shipments of Spent Lead Acid Batteries	75 FR 01236, January 8, 2010	722.110, 722.155, 722.158, 722.180, 722.181, 722.182, 722.183, 722.184, 722.185, 722.186, 722.187, 722.188, 722.189, 723.110, 724.112, 724.171, 725.112, 725.171, 726.180 (a) Table Effective October 14, 2011
223	Hazardous Waste Technical Corrections and Clarifications	75 FR 12989, March 18, 2010 75 FR 31716, June 4, 2010	720.110, 720 Appendix I, 721.101, 721.102 (c) Table 1, 721.104, 721.105, 721.106, 721.107, 721.123, 721.130, 721.131, 721.132 (a) Table, 721.133, 721 Appendix VII, 722.110, 722.111, 722.123, 722.134, 722.141, 722.142, 722.160, 723.112, 724.152, 724.156, 724.172, 724.414, 724.416, 724.652, 725.152, 725.156, 725.172, 725.414, 725.416, 726.120, 726.122, 726.170, 726.180, 726.201, 728.140 Table, 728.148, 702.181 Effective October 14, 2011
224	Withdrawal of the Emissions Comparable Fuel Exclusion	75 FR 33712, June 15, 2010	721.104, 721.138 Effective October 14, 2011
225	Removal of Saccharin and Its Salts from the List of Hazardous Constituents, Hazardous Wastes and Hazardous Substances	75 FR 78918, December 17, 2010	721.111, 721.133, 728.140 Effective October 14, 2011
227	Revisions of the Land Disposal Treatment Standards for Carbamate Wastes	76 FR 34147, June 13, 2011	728.140 Table, 728.148 Table Effective June 4, 2012
228	Hazardous Waste Technical Corrections and Clarifications Rule	77 FR 22229, April 13, 2012	721.132, 726.120 Effective March 4, 2013
229	Conditional Exclusions for Solvent Contaminated Wipes	78 FR 46448, July 31, 2013	720.110, 721.104 Effective May 27, 2014
230	Conditional Exclusions for Carbon Dioxide (CO <sub>2</sub> ) Streams in Geologic Sequestration Activities	79 FR 00350, January 3, 2014	720.110, 721.104 Effective May 27, 2014
231	Hazardous Waste Electronic Manifest System	79 FR 07518, February 7, 2014	720.110, 722.120, 722.124, 722.125, 723.120, 723.125, 724.171, 725.171

			Effective January 12, 2015
232	Revisions to the Export Provisions of the Cathode Ray Tube Rule	79 FR 36220, June 26, 2014	720.110, 721.139, 721.141 Effective January 12, 2015
234	Vacatur of the Comparable Fuels and the Gasification Rule	80 FR 18777, April 8, 2015	720.110, 721.104, 721.138 Effective August 9, 2016
235	Disposal of Coal Combustion Residuals from Electric Utilities	80 FR 21302, April 17, 2015	721.104 Effective August 9, 2016

### **G. Where are the revised state rules different from the Federal rules?**

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable.

### **More Stringent Rules**

EPA considers the following state requirements to be more stringent than the federal requirements:

- 35 IAC 722.141, because Illinois requires an annual report instead of the biennial report required in 40 CFR 262.22, 264.75, and 265.75.
- 35 IAC 724.156(i), because Illinois has added this provision to facilitate state notification.
- 35 IAC 725.414, because Illinois prohibits all liquids in landfills; where the Federal rules allow for exceptions in 40 CFR 265.314(f)(1) and (2).



These requirements would become part of Illinois' authorized program and would be federally enforceable.

### **Broader in Scope Rules**

EPA also considers the following state requirements to go beyond the scope of the Federal program:

- 35 IAC 721.103(g), because Illinois does not allow the exemption allowed in the Federal rules at 40 CFR 261.3(g)(4), for certain mixtures.

Broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with state law, they are not RCRA requirements.

### **Nondelegable Rules**

EPA cannot authorize the Federal requirements at 40 CFR 260.21, 268.5, 268.6, 268.42(b), and 268.44. Although Illinois has adopted these requirements verbatim from the Federal regulations at 35 IAC 720.121, 728.105, 728.106, 728.142(b), and 728.144, EPA would continue to implement the Federal requirements.

### **Universal Waste Lamps Rules Not Authorized**

Illinois allows Lamp Crushing under its current version of the Universal Waste Rule (35 IAC 733.105, 733.113(d), 733.133(d), and 733.134(e)), and has not applied for authorization of the Universal Waste Lamps Rule. In the future, EPA will determine whether to prohibit crushing of lamps, or decide under what conditions lamp crushing may be permitted. Until the issue is resolved, no state that allows crushing may be authorized for the Universal Waste Lamps Rule, and the Illinois version of the Universal Waste Lamps Rule is not part of the Illinois authorized program.

### **H. Who handles permits after the final authorization takes effect?**

When the final authorization takes effect, Illinois will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer

any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of the proposed authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Illinois is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

## **I. How does proportionate share liability affect Illinois' RCRA program?**

Illinois' RCRA authorities are not impacted by the proportionate share liability (PSL) provision of the Illinois Environmental Protection Act, 415 ILCS 5/58.9(a)(1). Section 58.9(a)(1) provides, in pertinent part:

Notwithstanding any other provisions of this Act to the contrary, . . . in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act or the Groundwater Protection Act to require any person to conduct remedial action or to seek recovery of costs for remedial activity conducted by the State of Illinois or any person beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by such person's act of omission or beyond such person's proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons.

Section 58.9 is part of Title XVII (Site Remediation Program) of the Illinois Environmental Protection Act. Title XVII does not apply to a particular site if “...(ii) the site is a treatment, storage, or disposal site for which a permit has been issued, or that is subject to closure requirements under Federal or state solid or hazardous waste laws” (415 ILCS 5/58.1(a)(2)(ii)). Hazardous waste treatment, storage, and disposal facilities under Subtitle C of RCRA fall within the exclusion at Section 58.1(a)(2)(ii). These facilities are subject to closure and post-closure care requirements under the Act (415 ILCS 5/22.17) and Illinois program rules that are identical

in substance to Federal rules at 40 CFR part 264 (35 IAC 724). The Illinois Appellate Court has held that the PSL does not apply to sites that are outside the scope of Title XVII. *People of the State of Illinois v. State Oil*, 822 NE. 2d 876 (Ill. App. 2004). Therefore, the exclusion at Section 58.1(a)(2)(ii) renders Title XVII, including Section 58.9, inapplicable to sites upon which RCRA regulated facilities are located. Based on this exclusion, and as indicated by the Illinois Attorney General in the Attorney General Statement included in the State's October 19, 2015 final program revision application, the PSL provision does not impact the adequacy of Illinois' RCRA authorities.

**J. What is codification and is EPA codifying Illinois' hazardous waste program as proposed in this rule?**

Codification is the process of placing citations and references to the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. EPA previously codified Illinois' authorized program in effect as of June 3, 1991, at 40 CFR part 272, subpart O (See 57 FR 3722, January 31, 1992). EPA is not proposing to codify the authorization of Illinois' changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart O for the authorization of Illinois' program changes at a later date.

**K. Statutory and executive order reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize state requirements for the purpose of RCRA Section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this proposed authorization of Illinois' revised hazardous waste program under RCRA are exempted

under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA Section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA

has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations; Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: **January 24, 2022.**

Debra Shore,  
*Regional Administrator*, Region 5.

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